

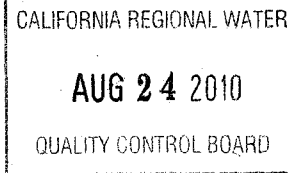
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August 20, 2010



Via Facsimile and U.S. Mail

Mayor Jeff Ira and City Council Members
City of Redwood City
1017 Middlefield Road
Redwood City, CA 94064

Re: Cargill Salt Pond Development Proposal CEQA Review

Dear Mayor Ira and Council Members:

This firm represents Save The Bay in connection with the Cargill Salt Pond Development Project, the joint Cargill/DMB "Saltworks" proposal to build a new city of 30,000 people on 1,436 acres of restorable salt ponds in Redwood City. Save The Bay has consistently urged the City Council to disapprove the Project at the outset, without conducting an expensive, politically divisive, and unnecessary environmental impact report ("EIR").

The City unquestionably has the power to deny the Project without first preparing an EIR or conducting any CEQA review. *See* CEQA Guidelines § 15270 ("CEQA does not apply to projects which a public agency rejects or disapproves."); Pub. Res. Code § 21080(b)(5) (same). Moreover, given that the City's General Plan envisions that salt ponds will "remain as open space forever," the City Council has no legal power to approve the Project at all unless it first decides to abandon this long-standing general plan policy. *FUTURE v. Bd. of Supervisors*, 62 Cal. App. 4th 1332, 1336 (1998).

Because the City Council nonetheless has voted to move forward with an EIR for the Project, Save The Bay seeks to ensure that this EIR fully complies with the law. One of CEQA's central purposes is that "public agencies should not approve projects as proposed if there are feasible alternatives . . . which would substantially lessen the significant environmental effects of such projects." Pub. Res. Code § 21002. Fulfilling this mandate, in turn, requires that the public agency must define the project's objectives fairly so that a full range of alternatives can be meaningfully considered.

Specifically, the project objectives must state the true “underlying purpose of the project,” CEQA Guidelines § 15124(b), and must not be arbitrarily manipulated to make the project as proposed appear more attractive or its approval as the only viable course to potentially achieve these objectives. *See In Re Bay-Delta Programmatic EIR Coordinated Proceedings*, 43 Cal.4th 1143, 1167 (2008) (explaining that “a lead agency may not give a project’s purpose an artificially narrow definition”).

Because the Project requires approval by federal agencies, similar requirements apply to the environmental impact statement (“EIS”) that must be prepared for it pursuant to the National Environmental Policy Act (“NEPA”). *See, e.g.*, 40 C.F.R. § 1502.13 (requiring federal agencies to “specify the *underlying purpose and need* to which the agency is responding”); *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 666 (7th Cir. 1997) (rejecting agency’s definition of project purpose and explaining that “[i]f the agency constricts the definition of the project’s purpose and thereby excludes what truly are reasonable alternatives, the EIS cannot fulfill its role”).

Even as they have voted to move forward with the EIR, City Council members have repeatedly insisted that they have not made any decision to approve the Project or to allow housing to be developed on the salt ponds that the General Plan specifies should remain as open space forever. Instead, Council members and the City’s official pronouncements regarding the Project have assured the public that the City’s CEQA process will be an open and comprehensive one, designed to determine whether this Project is an appropriate proposal to achieve the City’s housing needs, and whether these salt ponds are an appropriate site to achieve these needs.

There are many ways in which the City could potentially meet this purpose. For instance, as the City’s own draft EIR for its General Plan update makes clear, the City has abundant opportunities to provide for its future housing needs via “in-fill” housing downtown and in other already-developed areas of the City where municipal services and transit can be provided most efficiently and cost-effectively.

The City’s forthcoming issuance of the Notice of Preparation (“NOP”) for the Project EIR represents a crucial milestone for the City to properly define the Project purpose and meaningfully consider all reasonable alternatives to achieving that purpose.

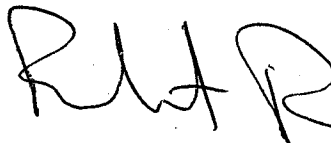
Accordingly, Save The Bay urges the City to set forth in the NOP a fair and accurate statement of the Project’s true underlying purpose, namely to provide housing to help the City meet its share of regional housing needs. The City must avoid arbitrarily defining other objectives within the Project description so as to favor the proposed Project or preclude meaningful consideration of feasible alternatives. Doing so would be

inconsistent not only with CEQA and NEPA, but also with the City Council's public assurances to Redwood City citizens and the public at large.

Properly defining the Project purpose will help ensure that the EIR complies with CEQA's requirements to meaningfully consider a reasonable range of alternatives to developing housing on the Cargill salt ponds, including the full utilization of areas identified for development in the general plan, while retaining maximum bayfront open space with the potential for restoration. Meaningful evaluation of an open space preservation alternative, beyond the required "no project" alternative, in the EIR for this Project is all the more important because both the current General Plan and the proposed new General Plan reserve and retain the salt ponds' open space designation while showing how the city's housing needs will be met through development in other locations.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

A handwritten signature in black ink, appearing to read 'R. Perl', followed by a long horizontal line extending to the right.

Robert "Perl" Perlmutter

cc: Jared Blumenfeld, Regional Administrator, US EPA
LTC Torrey A. DiCiro, US Army Corps
Ren Lohofener, Reg'l Director, Pacific Southwest. US Fish & Wildlife Service
Bruce Wolfe, Executive Officer, SF Bay Regional Water Quality Control Board
Will Travis, Executive Director, BCDC
Pamela Thompson, City Attorney, Redwood City